

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and  
SOUND UNITED, LLC,

Defendants.

C.A. No. 22-1377-MN-JLH

**JURY TRIAL DEMANDED**

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MASIMO CORPORATION,

Counter-Claimant,

v.

APPLE INC.,

Counter-Defendant.

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APPLE INC.,

Plaintiff,

v.

MASIMO CORPORATION and  
SOUND UNITED, LLC,

Defendants.

C.A. No. 22-1378-MN-JLH

**JURY TRIAL DEMANDED**

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MASIMO CORPORATION and  
CERCACOR LABORATORIES, INC.,

Counter-Claimants,

v.

APPLE INC.,

Counter-Defendant.

**LETTER TO THE HONORABLE JENNIFER L. HALL FROM DAVID E. MOORE**

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Dated: June 22, 2023  
10885606 / 12209.00051

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June 22, 2023

**VIA ELECTRONIC FILING**

The Honorable Jennifer L. Hall  
U.S. District Court for the District of Delaware  
J. Caleb Boggs Federal Building  
844 North King Street  
Wilmington, DE 19801-3555

Re: *Apple Inc. v. Masimo Corp., et al.*, C.A. Nos. 22-1377 & 22-1378-MN-JLH

Dear Judge Hall:

Masimo's motion for leave to amend raises new allegations that do not satisfy the heightened pleading standard for inequitable conduct for the same reasons set forth in Apple's motion to dismiss. (C.A. No. 22-1377, D.I. 54; C.A. No. 22-1378, D.I. 39; *see also* C.A. No. 22-1377, D.I. 123; C.A. No. 22-1378, D.I. 130 ("Masimo now seeks leave to amend its pleadings in both cases to add the exact same kind of allegations for the one remaining design patent.")) Apple respectfully intends to file a narrow objection to the Court's June 20, 2023 report and recommendation (C.A. No. 22-1377, D.I. 131; C.A. No. 22-1378, D.I. 124) including, pertinent to this motion, to the extent it found that Masimo's original answer and counterclaims had sufficiently pled inequitable conduct allegations against Jeffrey Myers. Because an amendment is futile if it "fails to state a claim upon which relief can be granted" (*Livery Coach Sols., L.L.C. v. Music Express/E., Inc.*, 245 F. Supp. 3d 639, 648 (D. Del. 2017))—the same legal standard that applies under Federal Rule of Civil Procedure 12(b)(6)—resolution of that objection in favor of Apple would render Masimo's proposed amendments with respect to Mr. Myers futile and warrant denial of Masimo's motion to amend as to those amendments. To minimize disputes, Apple does not intend to oppose Masimo's motion on any other ground.

Here, Masimo's motion for leave to amend rises and falls with the ultimate outcome of Apple's motion to dismiss and resolution of that related objection. Apple therefore respectfully requests that the Court reserve ruling on Masimo's motion for leave to amend pending the resolution of Apple's objection in accordance with Federal Rules of Civil Procedure. In light of the narrow basis on which Apple maintains its futility argument here, which is contingent on final resolution of its motion to dismiss inequitable conduct allegations, Apple respectfully submits that this dispute may be resolved on the papers without the need for a teleconference.

Respectfully,

/s/ David E. Moore

David E. Moore

DEM:nmt/10885606/12209.00051

cc: Clerk of Court (via hand delivery)  
Counsel of Record (via electronic mail)